

**Harpswell Planning Board Meeting
Minutes of February 19, 2003**

**Approved 3-19-03
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Attendance: James Henderson-Chairman, John Papacosma-Vice-Chairman, Don Rogers, Sam Alexander, Howard Nannen, Noel Musson-Planner, Karen O'Connell-Recording Secretary.

The meeting had been advertised in the Times Record, videotaped, broadcast live on Harpswell TV, and recorded. Chairman Henderson called the meeting to order at 6:30 P.M., introduced above members and staff and led the pledge of allegiance. Henderson then reviewed general Board procedures and the agenda for the evening.

Chairman Henderson appointed Sam Alexander a voting member for this meeting in the absence of Dorothy D. Carrier.

Approval of Minutes -

Motion - The minutes of January 15, 2003 were approved with several adjustments. (Motion by Alexander and seconded by Rogers - Carried 5-0)

Discussion Regarding Board Procedures -

Chairman Henderson reported that Board members had attended a recent Planning Board Workshop where it had been recommended that Planning Boards should vote separately on each of the standards for Site Plan Review. Henderson indicated that all items should have a separate vote and rationale as to why they are or are not met. He indicated that items that do not apply should have a statement as to why they are not applicable and that could be done collectively in less complex matters. Henderson indicated it is particularly important to follow this procedure in more complex matters. Henderson asked the Board to discuss this practice.

The Board discussed an issue raised by Nannen when there is a negative vote on several standards. The Board discussed the fact that all standards must be met for an item to be able to be passed and the burden is on the applicant to demonstrate with information that they meet criteria and not up to the Board to develop the information.

Papacosma indicated he recalled receiving a "Guide for Planning Boards" and in this guide he had read about a method to streamline the Site Plan Review process. Papacosma explained one method to streamline matters involves the Code Officer reviewing the application and providing the recommendation and rationale on each item and then the Board if they agree, are able to vote to uphold the Code Officer's recommendations on site plan items. The Board agreed they could vote to uphold such recommendations. Musson indicated he could add such information regarding items that do not apply in his memos.

Henderson indicated it would be helpful if arrangements could be made for all members to attend Site Visits.

03-02-01 Mary Bernier, Site Plan Review/Wharf Approval, Commercial Fishing I, Tax Map 30-134, Lowell's Cove Rd, Orr's Island.

Site Visit - Chairman Henderson reported that he and Don Rogers had attended the Bernier site on February 18, 2003 with the applicant and others. They had viewed the site from the road looking toward Lowell's Cove. They noticed a rocky space, no beach, two structures, and a minimal amount of space. Henderson noted there was barely enough space for a moderate sized vehicle to park. But Henderson indicated he had been advised the space would be used infrequently, usually one vehicle at a time, with persons parking briefly for loading and unloading traps. Don Rogers noted that he observed one of the abutters has a similar set-up close to the bank.

Applicant Presentation - John Crowley, applicant representative, and Nephew of Mary Bernier introduced himself and others who represented the Berniers. Mr. Crowley read from a one page project description summary (attached to the minutes for reference.) He summarized: 1. need for reconstruction of a commercial wharf and fish house, 2. site layout, and 3. size of the project. (see attached)

In response to questions from the Planning Board members, Crowley indicated the site is 250 feet from mean low water tide line. Crowley indicated the area for parking is thirteen feet from the edge of the pavement to the point that the land falls away at waters edge. The wharf would be used for a brief time during

the Fall/Winter for trap storage and again in the Spring for loading traps onto boats. Crowley indicated it would be possible to park up to three vehicles parallel to the road. Crowley indicated more likely two vehicles would be parked. Henderson asked to confirm that it would be just one lobsterman who would be utilizing this comparatively small site at one time and Crowley confirmed, yes just one person.

Public Comment - Henderson asked those present if there were any questions or issues with the proposal and there were no responses at this time.

Board Questions and Discussion - Alexander asked Crowley if there would be any bait storage on site and Crowley indicated there would be none.

Nannen asked about any Storm water run off provisions and site grade and if there was a plan to pave the parking area and Crowley indicated no. Crowley indicated the distance is 26 feet from the crown of the road to where the bank becomes ledge adjacent to the water. He indicated his belief that the parking would not cause a storm water run off issue. Alexander noted and the Board discussed with Crowley that the land naturally slopes considerably toward the opposite side of the road away from this site, the parking area, and water. Henderson noted that the Code Officer had indicated storm water management was not an issue.

The Board discussed that the site is located in a U-2 Flood Hazard Zone, but indicated the wharf is not affected by the Flood Plain Ordinance and the proposed fish house is small, could be exempt and therefore not an issue.

Rogers noted the neighborhood is also utilized for boat storage on adjacent lot across the street.

Henderson reviewed a memo by Noel Musson who recommended it be considered a complete application. Musson indicated items marked incomplete were addressed by Codes or not applicable. Musson indicated the Flood Plain requirements were addressed.

Musson indicated that the building envelope was not applicable and Henderson indicated lot coverage was not an issue. The Board discussed there was minimal construction of the wharf on the land. Alexander pointed out that certain portions or end of the wharf are on the land, a section approximately 6 feet by the width of the wharf.

Henderson concluded that the application was complete.

Review of Section 15.3 of the Shoreland Zoning Ordinance was reviewed to determine if the requirements are met.

15.3.1. Access from shore - Henderson indicated The Codes Officer indicated the erosion issue was not significant and it would be developed on a ledge.

15.3.2. Beach areas - Henderson testified that site visitors did not see any beach.

15.3.3. Affect on fisheries - Henderson indicated this development was a positive affect on fisheries and confirmed that abutters were supporting the application.

15.4 and 15.4.2 Size of pier - The applicant testified there was a need for a larger width pier to allow for a minimal capacity to store traps and gear and indicated abutting wharfs were as wide if not wider noting that historically all of the neighborhood wharfs were connected. Henderson noted that the Codes Officer can reduce setbacks from neighbors if neighbors demonstrate approval.

Motion - To accept the applicant's proposal for a 20 foot wide wharf in accordance with Section 15.3.4.2 (Motion by Rogers and seconded by Papacosma- carried 5-0)

Henderson indicated the record would show the rationale for the above motion.

Henderson continued review of sections **15.3.5, 15.3.6, and 15.3.7** and found them not applicable and no issues. Henderson asked Planner Musson if all necessary Shoreland Ordinance items had been reviewed and Musson indicated yes.

Review of Section 15 - Site Plan Review Approval Standards and Criteria

15.1 Dimensional Requirements - Henderson indicated the width requirement had been settled and Alexander noted the lot was a non conforming lot of record. **Motion - The application meets the requirements of 15.1 based on testimony on need for a wider wharf and the Board's previous vote to approve such wider wharf (Motion by Henderson and seconded by Nannen -carried 5-0)**

15.2 Utilization of the Site - Motion - The Board finds that the proposal meets the

requirements of 15.2 because of the natural features of the site and because it is traditionally and currently being used for fishing purposes and the Code Officer has indicated that drainage is appropriate and there is no danger to significant environmental features and on the condition that natural vegetation be maintained to act as a buffer to enhance absorption of any runoff that may make its way to the cove. (Motion by Henderson amended and seconded by Nannen- carried 5-0) Nannen indicated he had concern about storm water runoff and the Board had insisted on rigorous retention in the past. He wondered if there had been any consideration to minimize runoff to protect the cove and lobster industry. Tim Johnson testified that any water would naturally run off to the other side by Sylvester's property. Nannen suggested shrubbery could be planted at the top of the bank as run off protection. Crowley indicated there is gravel and grass that could be maintained as a run off preventive. Nannen indicated that it might be beneficial to the young developing lobsters in Lowell's cove to increase the natural grass and vegetation on the rise near the bluff and the motion was amended as noted above.

15.3 Adequacy of the Road System - Motion - The Board finds that the requirements of 15.3 are not applicable because there is no access off the main road to this site (Motion by Henderson and seconded by Alexander - carried 5-0)

15.4 Access into the Site - Motion - The Board finds that requirements of 15.4 are not applicable because there is no access into the site other than from the side of the road. (Motion by Henderson and seconded by Nannen - carried 5-0)

15.5 Access/egress Way Location and Spacing - Motion - The Board finds that the requirements of 15.5 are not applicable because there is no access or egress from this site to the road. (Motion by Henderson and seconded by Papacosma - carried 5-0)

15.6 Internal Vehicular Circulation - Motion - The Board finds that the requirements of 15.6 are not applicable because there is no internal vehicular circulation. (Motion by Henderson and seconded by Nannen - carried 5-0)

15.7 Parking - Motion - The Board finds that the proposal meets the requirements of 15.7 because the application indicates a 40 foot space to the east of roadway adequate for up to three vehicles within that space. (Motion by Henderson and seconded by Rogers - carried 5-0)

15.8 Pedestrian Circulation - Motion - The Board finds that the requirements of 15.8 are not applicable because this is a wharf and there is no requirement for a system of pedestrian ways on a wharf. (Motion by Henderson and seconded by Nannen - carried 5-0)

15.9 Storm Water Management - Motion - The Board finds that the proposal meets the requirements of 15.9 because of the reasons stated above in the approval of section 15.2 utilization of site. (Motion by Henderson and seconded by Alexander - carried 5-0)

15.10 Erosion Control - Motion - The Board finds that the proposal meets the requirements of 15.10 based on written testimony of Codes Enforcement Officer and the observation at the site visit by two members of the Board and the testimony by the applicant that natural vegetation at the road edge will be preserved. (Motion by Henderson and seconded by Nannen - carried 5-0)

15.11 Water Supply and Groundwater Protection - Motion - The Board finds that the requirements of 15.11 are not applicable as there is no water supply to this site. (Motion by Henderson and seconded by Alexander - carried 5-0)

15.12 Subsurface Waste Disposal - Motion - The Board finds that the requirements of 15.12 are not applicable because there is no sewage system proposed at the site. (Motion by Henderson and seconded by Nannen - carried 5-0)

15.13 Utilities and Essential Services - Motion - The Board finds that the proposal meets the requirements of 15.13 because the utilities are limited to existing public ways and do not cross open areas and scenic views as defined by the Comprehensive Plan. (Motion by Henderson and seconded by Henderson - carried 5-0) Henderson confirmed with Crowley that there was electrical service and Alexander confirmed that the power line would run from the pole to the mast on the fish House. The Board discussed the time of use of the wharf was brief between tides and lasting two weeks and that there would be no need for solid waste disposal and all waste that might be generated would be taken to the recycling.

15.14 Natural Features and Buffering - Motion - The Board finds that the proposal meets the requirements of 15.14 considering the reasoning the Board expressed in approving Section

15.2 utilization of the site (Motion by Henderson and seconded by Nannen - carried 5-0)

15.15 Lighting - Motion - The Board finds that the proposal meets the requirements of 15.15 because the proposal does not create undue hazards as indicated by testimony on 15.15 in the application (Motion by Henderson and seconded by Nannen - carried 5-0) Nannen recommended that shielded lighting be used so that glare does not impact the abutting properties or the road area.

15.16 Water Quality Protection - Motion - The Board finds that the proposal meets the requirements of 15.16 based on testimony of the applicant that there would be no activity involving sewage discharge of any liquids as described in section 15.16 (Motion by Henderson and seconded by Alexander - carried 5-0)

15.17 Hazardous, Special, and Radioactive Materials - Motion - The Board finds that the proposal meets the requirements of 15.17 since the application specifically indicates that no chemicals, flammable, explosive solids or gases will be stored in bulk on the wharf or in the fish house. (Motion by Henderson and seconded by Nannen - carried 5-0)

15.18 Solid, Special, and Hazardous Waste Disposal - Nannen indicated he understood there would be a relatively limited amount of waste which would be taken care of by the lessee. Motion - The Board finds that the proposal meets the requirements of 15.18 because of the specification in the application that the tenant will be required by the lease agreement to provide for proper waste disposal according to the requirements of the ordinances. (Motion by Henderson and seconded by Rogers - carried 5-0)

15.19 Historic and Archaeological Resources - Motion - The Board finds that the proposal meets the requirements of 15.19 since the applicant has supplied the board with a letter from the Maine Historic Preservation Commission indicating there are no archaeological or historic sites endangered here (Motion by Henderson and seconded by Alexander - carried 5-0)

15.20 Flood Plain Management - Henderson clarified with Musson that the wharf is not affected by the Floodplain Management Ordinance and the fish house is exempted because it is a small enough structure with insignificant value. Rogers noted the fish house is placed on the wharf. Henderson referenced the memo from Codes as providing an explanation. - Motion - The Board finds that the proposal meets the requirements of 15.20 based on memo from the Codes Enforcement Officer that the impact of loss from the flood would be minimal in value providing that the Codes Officer indicates this conclusion is consistent with the Flood Plain Management Provisions and that would be placed in the record of this application. (Motion by Henderson and seconded by Rogers - carried 5-0)

15.21 Technical and Financial Capacity Henderson asked for additional assurance as to financial resources. Musson indicated that this requirement generally acts as a guarantee on costly conditions. Contractor James Potvin testified that he had been building docks for 45 years and was not certain regarding costs as yet but could get an estimate. The Board discussed Rogers's suggestion that the financial capacity should be accepted on their testimony and concluded that some evidence should be presented. Crowley indicated a certificate of completion would be one protection and they have \$30,000 in the bank set aside for this project which can be documented. The Board discussed and then abandoned one motion regarding this matter and a second motion was proposed after discussion. Motion - The Board finds that the proposal will meet the requirements of 15.21 based on testimony of Mr. Potvin with 45 years experience which indicates technical capacity to carry out the project and provided that the applicant delivers a letter from their financial institution demonstrating at least \$30,000 in the applicant's account is available to carry out this development. (Motion by Henderson and seconded by Nannen- carried 5-0) Crowley asked about standards for financial capacity and Henderson provided a brief explanation.

Henderson asked if there was any other question or issue.

Motion - the Board approves the application of Mary Bernier to construct a wharf and fish house at Lowell's Cove based on the application received by the town on January 22, 2003. (Motion by Henderson and seconded by Rogers - carried 5-0)

Adjournment - Henderson made a motion to adjourn and the meeting was adjourned at 8:10 P.M.

Respectfully Submitted,

Karen O'Connell, Recording Secretary